* THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

And

THE HON'BLE SRI JUSTICE B.SESHASAYANA REDDY

+ WRIT PETITION NO : 20192 of 2002

% TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

M/s Oil Country Tubular Ltd.,

Sreepuram, Narketpally (RM), Nalgonda District.

Rep. By its Manager (Administration)

Sri.G.Venubabu S/o.Veeraiah, aged 37 years,

R/o.6-6-242, Ravindranagar,

NALGONDA

Petitioner

Versus

$ 1. A.P.Pollution Control Board,

S.R.Nagar, Hyderabad.

2. State Government of Andhra Pradesh,

EFS & T Department, Secretariat, Hyderabad.

Respondents

! Counsel for the petitioner : Sri.M.Ravindra Nath Reddy

^ Counsel for the Respondent No.1: Mr.S.V.Bhatt, Standing Counsel for A.P. Pollution Control Board.

Counsel for the Respondent Nos.2 : Standing Counsel for EFS & T Dept.

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>Head Note:

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1. (2001) 2 SCC 62

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

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THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

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   EFS & T Department, Secretariat, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction especially one in the nature of Writ of Certiorari calling for records relating to Orders in Appeal No.19 of 1999 dated 31-08-2002 of the Appellate Authority under Water (Prevention & Control of Pollution) Act, 1974 and Air (Prevention & control of Pollution) Act, 1981 and quash the same as contrary to law and pass such other orders.

Counsel for the Petitioner : Sri.M.Ravindra Nath Reddy

Counsel for the Respondent No.1: Mr.S.V.Bhatt, Standing Counsel for A.P. Pollution Control Board.

Counsel for the Respondent No.2 : Standing Counsel for EFS & T Dept.

The Court made the following :

ORDER : (Per B.Seshasayana Reddy, J)

1. The writ petitioner assails the judgment dated 31-08-2002 passed in Appeal No.19 of 1999 on the file of the Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 in this writ petition filed under Article 226 of the Constitution of India.

2. The writ petitioner is a Public Limited Company incorporated under the

Companies Act, 1956. The petitioner has set up an engineering industry at Sreepuram village, Yellareddy Gram Panchayat, Narketpally Mandal, Nalgonda District for processing of graded Seamless Pipes, Tool Joints and Couplings and converting them into Tubular goods suitable for ready use in Oil Producing Countries world over. The petitioner applied to A.P. Pollution Control Board (hereinafter referred to as Board) on 10-2-1987 and obtained "No Objection Certificate" on 19.10.1987 to set up a unit to manufacture Drill Pipes, Production Tubing and Casing Pipes with a capacity of 34 MTs, 50 MTs and 83 MTs per day respectively at Sreepuram village, Yellareddyguda Grampanchayat limits, Nalgonda District. The said 'No Objection Certificate' was issued by laying down about nine conditions. They read as under:

1. The industry shall treat the domestic effluents to the standards laid down in ISI 2490, Part – I, 2nd revision, 1981.

2. The industry shall ensure zero effluents from the process.

3. The industry shall periodically report the progress of the construction/stage of E.T.P.

4. The industry shall construct and commission the effluent treatment plant along with the commissioning of the industry.

5. The industry shall carry out the necessary measures to control air pollution so as to meet the following standards.

   i) SPM - 115 mg/NM 3

   ii) SO 2 - 800 mg/Nm 3

6. The industry shall install stack after designing the height & diameter of the stack strictly strictly adhering to the ground level concentrations (enclosed) prescribed by the Board.

7. Trees shall be planted and maintained in the vacant spaces of the premises.

8. The applicant shall obtain 2nd No Objection Certificate of the Board before the factory goes into trail production.

9. Regular consent of the Board shall be obtained as required under section 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention and Control of Pollution) Act, 1981."

As per condition No.8 thereof, the petitioner was directed to obtain second 'No

Objection Certificate' before commencement of the production and as per condition No.9 the petitioner was directed to obtain regular consent as required under sections 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as the Water Act, 1974) and Sections 21 and 22 of Air (Prevention and Control of Pollution Act, 1981 (hereinafter referred to as the Air Act, 1981). The petitioner established the unit and commenced production in December, 1990. It has been obtaining the consent under the Water Act, 1974 year after year. Since the petitioner stopped obtaining consent under the Water Act, 1974 a show cause notice was served on the petitioner by the Board as to why action should not be taken for not obtaining the consent under the Water Act, 1974 and the Air Act, 1981. The petitioner submitted explanation on 13.4.1996 stating that it does not come within the purview of both the Acts, and requested the authorities not to insist on 'consent' and sought exemption from applying for consent as well as its renewal. The Board under letter No.507/PCB/RO-NLG/89-56 dated 23.4.1996 turned down the request of the petitioner and directed him to apply for consent. It is stated in the above-referred communication that the petitioner-industry has been discharging sanitary waste water and phosphating effluents under the Water Act, 1974 and generator emissions under the Air Act, 1981. Assailing the order passed by the Board, the petitioner preferred an appeal to the Environmental Engineer who returned the appeal petition on 3-6-1998 with a direction to present the same before the Appellate Authority in the prescribed proforma along with the requisite fees etc. as per the provisions of the Water Act, 1974 and the Air Act, 1981. The petitioner applied for consent on 23.6.1998 for three years under the Water Act, 1974 by paying the requisite fee of Rs.78,750/-, but the Board granted consent only for one year i.e. upto 31.3.1999. The petitioner submitted a representation dated 11.11.1999 requesting the Board for renewal of the consent under the Water Act, 1974 for another two years i.e. 1999 to 2001. Exemption from payment of taxes or fees in future was also sought for in the said representation. The Board turned down the request of the petitioner with regard to the exemption sought for under both the Acts and communicated the same under proceedings dated 1.12.1999. In the above referred communication, the Board clarified that the petitioner-company need not pay any fee for two more years from the date of expiry of water consent and advised the petitioner to make a request to adjust the two years fee towards the water Act, 1974 and one year fee towards the Air Act, 1981 i.e. upto 31.3.2000. In any case, the petitioner was to file an application seeking extension for consent. The petitioner

was also informed of its right of appeal to the appellate authority. The petitioner filed an appeal under section 28 of the Water Act, 1974 and Sec.31 of the Air Act, 1981 to the appellate authority. The petitioner contended before the appellate authority that the petitioner-industry was not obliged to obtain consent for operation and the requirement of consent was only at the time of establishment of the Unit and not for carrying on the activity after establishment. The petitioner as well as the respondent made written submissions before the appellate authority. The appellate authority on considering the material brought on record formulated the following points:

i. Whether the Appellant industry is not liable to obtain "consent" under the Water and Air Acts.

ii. In any event whether "consent" obtained once, i.e. at the time when the industry was installed, is sufficient and it need not be renewed periodically as contended by the A.P. Pollution control Board.

iii. Whether the Appeal is not maintainable and the relief prayed for by the Appellant cannot be granted as per the provisions of Air and Water Acts.

iv. Whether directing the Appellant to obtain consent under the Water and Air Acts infringes the fundamental rights of those concerning the Appellant company guaranteed under Article 19(I)(g) of the Constitution of India.

v. In any event, whether the amount claimed towards "fee" by the A.P. Pollution Control Board is exorbitant.

vi. To what relief.

The Appellate Authority after considering the material brought on record and submissions, oral as well as written, of both the parties dismissed the appeal of the petitioner, while permitting it to pay the requisite fee minus the amount lying with the Board for consent under the Water Act, 1974 and the Air Act, 1981 till 31.3.2003, with further direction to the Board to scrutinize the application in accordance with the provisions of both the Acts and the Rules framed there under expeditiously. The judgment dated 31.8.2002 passed by the appellate authority is assailed in this writ petition.

3. Learned counsel appearing for the petitioner submits that the Water Act, 1974 and Air Act, 1981 do not cover all kinds of discharge or emission of pollutants, but they cover only such discharge or emission of pollutants which are above the prescribed levels and thus if the pollution is within the limits, the said Acts have no application and the question of obtaining consent does not arise. A close reading of Secs.25 and 26 of the Water Act, 1974 makes it clear that the consent is required for establishment but not for carrying on. If the Act obligates on the constituent to seek consent for operation, it amounts to unreasonable restriction which in turn infractures fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. The specific use of expression to establish or to take steps to establish vis-à-vis the use of expression to carry on or carried on clearly denotes that Parliament intended to require a person to obtain consent only to establish, but not for carrying on. But only the expression to establish or to take steps to establish have been used in Sec.25 and not the expression to carryon. In nutshell, his submission is consent is not required for carrying on and it is required only for establishing. His next submission is that the source of the power of the Board to insist upon consent to carryon industry, operation process or treatment or disposal system after having established such industry, operation process or treatment or disposal system is not traceable to any of the provisions contained under any of the Acts including the Water Act, 1974 and the Air Act, 1981. Hence, insisting on such a consent is one without jurisdiction. If such a consent is held to be obtained every year, then collecting the said fee would become compulsory in nature and since it is collected as fee for granting consent, there is no *Quid Pro Quo,* the same amounts to tax, but not fee. And no tax is leviable without source of power, for running an industry. As per the unamended S.25 of Water Act, 1974, consent was intended only for bring in to use any new or altered out-let for discharge of sewage or trade effluent or begin to make any new discharge of any sewage or trade effluent. Thereafter the Act was amended by Act No.44 of 1978. Though S.25 was amended by the 1978 Amendment Act, but the said amendment has no bearing on the point in question for the reason that the words “stream or well” have substituted by “stream or well or sewage or a land” and, after the words “under sub-section(1)“ the following words have been added “ shall be accompanied with such fees as may be prescribed and”. Thereafter the scope of the Water, 1974 was enlarged by Act No.53 of 1988 so as to cover industries operation etc. at the stage of their inception itself namely “for establishing or to take steps to establish.”

4. In nutshell, the submissions of the learned counsel for the petitioner are :

i. A person is prohibited to establish or to take any steps to establish any of the activities or otherwise, referred in Sec.25 of the Water Act, 1974, unless, consent is obtained from the Board. But the section does not refer to or take in its fold ‘carrying on of any’ activity. Hence consent is not required for ‘carrying on’;

ii. If such activity which is sought to be established, is not likely to discharge sewage or trade effluent at all no such consent is required to be obtained even for establishing;

iii. If such activity which is sought to be established is likely to discharge sewage or trade effluent but if such discharge is within the limits prescribed then also consent is not required;

iv. Once consent for establishment is obtained no further consent is required for carrying on any activity;

v. There are enough provisions for controlling the mischief in the second stage namely while “carrying on’ such “ i) industry, ii) operation, iii) process, iv) any treatment or disposal system, v) any extension or addition thereto;

vi. Imposition of obligation to secure consent for operations is in violation of fundamental right under Article 19(1)(g) of the Constitution of India;

vii. Even if any such consent is required, insisting the establishment to renew the consent year after year amounts to unreasonable restrictions;

viii. If such consent is held to be obtained every year, then collecting the said fee would become compulsory in nature and since it is collected as a fee for granting consent, the same is exorbitant and has no nexus with services being rendered.

5. Per contra, learned Standing Counsel for R1-Board submits that the applicability of Sec.25 is not dependent on the discharge of trade effluents over and above the prescribed standards. The words likely to discharge sewage or trade effluents make it abundantly clear that likely discharge of sewage or trade effluent from industry….etc is enough to attract the requirement of Sec.25 of the Water Act, 1974. The effluents discharged from the petitioner-industry are with several parameters having potential on water bodies, on land etc. The consent that is granted under section 25 is for the industry operation or process, which is likely to discharge sewage or trade effluents, but not for the pollution that is generated. The proviso which is introduced through 1988 amendment Act further makes it clear that industries which have been in operation without consent were given three months time to apply for consent and continue to run till disposal of such application. The word 'establishment' should not be understood only to mean pre-production stage in an industry. The word establishment denotes a continuous act and so long as the activity goes on the Board is under obligation to call upon the unit to have the consent for operation from the Board. The State Government in exercise of its powers under section 64(j)(k) of the Water Act, 1974 has rationalized the consent fee structure vide G.O.Ms.No.157 EFS & T, dated 22.11.1997. The G.Os have not only rationalized the consent fee structure on pollution potential and capital outlay to the units but also prescribed the consent fee for operation annually. The application of *quid pro quo* is uncontextual. The amount realized by way of consent fee are being utilized by the Board for discharging the functions under:

1. Hazardous Waste (Management and Handling) Rules, 1989 and Amendment 2000.

2. Manufacture, Storage, Import of Hazardous Chemicals Amendment Rules 2000.

3. Bio-Medical Waste (Management and Handling) Rules, 1998.

4. Municipal Solid Waste (Management and Handling) Rules, 2000.

The effluents discharged by the petitioner-industry are trade effluents and satisfy the

definition of pollution in Sec.2(e) of the Water Act, 1974. The petitioner-industry comes within the purview of the Water Act, 1974 and the Air Act, 1981 and consequently the Board has authority to control, regulate or interfere with the operations of the petitioner-industry. In conclusion, he submits that the consent of the Board is required at two stages, one is before establishment and another is at the commencement of operations and that the Board is empowered to fix the validity of the consent. He refers official memorandum dated 27.9.88 issued by Government of India, Department of Environment, Forest and Wildlife and G.O.Ms.No.157 EFS & T, dated 22.11.1997. He also refers to Form XIII of Schedule I of the Water Act, 1974.

6. Both the counsel referred the decision of Apex Court in A.P.POLLUTION CONTROL BOARD II v. PROF.M.V.NAYUDU (RETD.) AND OTHERS, popularly known as SECOND SURANA'S case in support of their respective submissions.

7. Before dwelling on the rival contentions we deem it appropriate to have a glimpse on the factual aspects of the case. The petitioner- establishment applied for consent to establish the industryon 10.2.1987. The consent by way of "No Objection Certificate" was accorded to the petitioner on 10.2.1987. The petitioner also secured consent for operations by paying necessary fees under the Water Act, 1974 and the Air Act, 1981. When the petitioner-establishment stopped obtaining consent, a show cause notice was issued by the Board on 10.4.1996 as to why action should not be taken for violation of the Water Act, 1974 and the Air Act, 1981. The petitioner submitted explanation on 13.4.1996 claiming that the industry does not come within the purview of both the Acts. The Board did not accept the contention of the petitioner and directed to obtain consent under both the Acts by letter dated 23.4.1996. The petitioner preferred an appeal before the Environment Engineer who returned the appeal petition for presentation before the appropriate authority. Later on, the petitioner presented the appeal petition to the appellate authority. In the mean while the petitioner submitted a representation on 11.11.1999 for renewal of consent for two years namely from 1999 to 2001. At this juncture, we deem it appropriate to refer the relevant portion of the application submitted by the petitioner seeking for renewal of the consent under the Water Act, 1974 and it is thus:

" Out Industry comes under a "ORANGE" category. The manufacturing

> processes of our Industry are – Threading, Welding or Jointing, Heat Treatment and surface Coating or Painting of Steel Pipes/Tubes to be supplied to ONGC and free of pollution of all matters including WATER and AIR. We have mentioned about our Industries Environment Conditions including the Water and AIR in our Letter No.OCTL/P&A/98, dated 23.06.1998 addressed to your office. We got tested the discharged Water and AIR discharged from Diesel Generators by ENVIRON LABS & CONSULTANTS, HYDERABAD which is a Government Approved Laboratory. The copy of Test Certificate is enclosed herewith and you will know that our Industry is free of all kinds of Pollutions."

The reason for referring this letter is that the petitioner categorized its industry under ORANGE category. The categorization of the industries finds place in the official memorandum dated 27.9.88, Government of India, Ministry of Environment, Forests and Wild Life. Consent fee for establishment and operation, renewal of industrial units under the Water Act, 1974 and the Air Act, 1981 has been fixed by the Government under G.O.Ms.No.157 EFS & T, dated 22.11.1997. The petitioner did not choose to challenge the above referred memorandum or the Government Order.

8. It can be said without any controversy that the petitioner has obtained NOC for establishment of its factory and also consent for commencement of its operation. What is required to be examined is whether the provisions of the Water Act, 1974 and the Air Act, 1981 obligate the petitioner to renew the consent periodically, say year after year. It is the contention of the petitioner that it does not come within the purview of the Water Act, 1974 and the Air Act, 1981 and therefore there is no need for it to obtain consent or renewal of consent under both the Acts.

9. Learned counsel for the petitioner submitted extensive arguments by referring to various provisions of both the Acts to make out a point that the petitioner-industry does not come under the purview of both the Acts. His contention can be dispelled by referring to uncontroverted averments in the counter filed by the respondents before the appellate authority. Paragraphs 4 and 5 of the counter read as follows:

" 4. It is further submitted that industry generates trade effluents from the upsetting plant, phosphating section and from different process machinery in addition to domestic effluents. These effluents contain waste coolant, oils, grease, heavy metals like zinc etc. The industry is discharging waste lube mixed with water from upsetting plant through open drains finally joining stone lined tank / rain water harvesting structure. Waste water from pretreatment plant, WTC plant, tool joint unit, phosphating section, coupling plant, coating plant is discharged into unlined soak pit and the over flow for gardening. Effluents from canteen, administrative building, workshop, service bay, coating plant are discharged into cement lined tank along with septic tank overflow.

5. I further submit that the industry has provided chimneys to LPG fired furnaces in heat treatment plant and to furnaces in the upsetting plant in addition to four chimneys attached to D.G.Sets."

10. The appellate authority considered test reports placed on record and after referring the test reports extensively categorized the petitioner-industry as potential polluting one. We deem it appropriate to refer the relevant portion of the impugned judgment and it is thus:

" The learned counsel appearing for the industry submits that the machines installed in the factory are sophisticated and being operated on electronically controlled computerized systems; the Furnaces installed work on smokeless LPG Burners as distinguished from Firewood, Coal, Coke, Furnace Oil and LDO (Low Density Oil); the main inputs are Steel Products (Pipes, Tool Joints and Couplings) manufactured elsewhere and which cannot be, a source of pollution in the strict technical and legal sense of the term; the factory of the industry is located far away from the city limits of Hyderabad i.e. 86 KMs to Hyderabad and 22 KMs to Nalgonda; there are no residential dwelling units within the vicinity fo 2 KMs from the factory; the factory is spreading over an extent of 60 acres of land and the construction of buildings and sheds ensured free flow of air and ventilation, the safety and housekeeping practices in the factory are many a times above the standard practices followed in general engineering industries; one third of the total area in the factory premises has been earmarked and devoted to develop and maintain greenbelt in all seasons and periodical tests are being conducted through approved laboratories to ensure that the image of the factory is environmental friendly, that air and water is not contaminated by pollutants and that industrial effluents and trade wastes are not let out to see that the image of the industry is not tarnished in the eyes of the general public. So, saying the learned

> counsel appearing for the industry submits that there was no possibility for causing any pollution by the industry and hence there is no necessity to obtain “consent” by the industry under the Water and Air Acts. It is true that the industry has taken certain steps to contain the pollution and to maintain the industry in a eco-friendly manner, but that is no ground for exempting the industry from obtaining “consent” under the Water and Air Acts in accordance with the provisions of Water and Air Acts. It is also to be noted that, as observed in the course of this judgment, the industry has contributed to the pollution as per the results of the analysis reports extracted in the course of this judgment.”

Since the observation made by the appellate authority is based on the results of the analyst reports after extensive reference thereof, we are not inclined to disturb the finding in this writ petition.

11. The main submission of the learned counsel for the petitioner is that once the unit swings into action i.e. operation there are enough provisions to control its activities and in such a situation, consent for operation is not contemplated under section 25 of the Water Act, 1974. He makes reference to various provisions of Sections 17, 20, 21, 23, 24, 27, 30, 31, 33 and 33-A of the Water Act, 1974 and sections 17, 18, 19, 20, 22, 22-A, 23, 24, 25, 26 and 31-A of the Air Act, 1981 and Sections 3, 5, 6, 7, 8, 9, 10, 11 and 20 of Act. 29 of 1986. According to him, the above regulatory provisions provide for controlling the mischief at second stage namely while “carrying on” such ‘(1) industry, (2) operation, (3) process (4) any treatment or disposal system, (5) any extension or addition thereto.

12. The Water Act, 1974 has undergone amendments twice. Once in 1978 and the other in 1988. Virgin section 25 reads as follows:

> "SECTION 25: Restrictions on new outlets and discharges:
>
> 1. Subject to the provisions of this section, no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well or begin to make any new discharge of sewage or trade effluent into a stream or well.
> 2. An application for consent of the State Board under sub-section (1) shall

be made in the prescribed form and shall contain particulars regarding the proposed construction, installation or operation of the industrial or commercial establishment or of any treatment and disposal system or of any extension or addition thereto and such other particulars as may be prescribed.

3. The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

4. The State Board may grant its consent referred to in sub-section (1) subject to such conditions as it may impose, being –

   a. in the case of a new or altered outlet, conditions as to the point of discharge into the stream or well or the construction of the outlet, or as to the use of that outlet or any other outlet for sewage or trade effluent from the same land or premises; and

   b. in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of the effluent from the land or premises from which the new discharge is to be made,

   and any such conditions imposed shall be binding on any person using the outlet, or discharging the effluent from the land or premises aforesaid.

5. Where, without the consent of the Board, a new or altered outlet is brought into use for the discharge of sewage or trade effluent into a stream or well or a new discharge of sewage or trade effluent is made, the State Board may serve on the person using the outlet or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect to such outlet or discharge.

6. Every State Board shall maintain a register containing such particulars of the conditions imposed under this section in relation to outlets or in relation to effluent from land or premises in its jurisdiction and as are for the time being in force (other than the conditions to be satisfied before an outlet is brought into use or a new discharge is made) and so much of the register as relates to any outlet, or to any effluent from such land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by, the outlet, or in the land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.

7. The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

8. For the purposes of this section and Secs.27 and 30 –

   c. the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after

commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

d. the expression “new discharge” means a discharge which is not as respects the nature and composition, temperature, volume, and rate discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

To make it obligatory on the part of a person to obtain the consent of the relevant Board for establishing or taking any steps to establish any industry, operation or process, which is likely to cause pollution of water and also to empower the Boards to limit their consents for suitable periods so as to enable them to monitor observance of the prescribed conditions, certain amendments have been made to various provisions of the Water Act, 1974 by the Act called Water (Prevention and Control of Pollution) Amendment Act, 1988. The amended section 25 reads as follows:

“ **Restrictions on new outlets and new discharges**:

1. Subject to the provisions of this section, no person shall, without the previous consent of the State Board,

e. establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

f. bring into use any new or altered outlets for the discharge of sewage; or

g. begin to make any new discharge of sewage:

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months; till the disposal of such application.

2. An application for consent of the State Board under sub-section (1) shall be

made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.

3. The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

4. The State Board may-

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

i. in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

ii. in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

iii. that the consent will be valid only for such period as may be specified in the order,

and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation, or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or

(b) refuse such consent for reasons to be recorded in writing.

5. Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made the State Board may serve on the person who has established or taken steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

6. Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorized by him in this behalf and the conditions so contained in such register shall be conclusive

proof that the consent was granted subject to such conditions.

7. The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

8. For the purposes of this section and sections 27 and 30,-

a. the expression “new or altered outlet” means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

b. the expression “ new discharge” means the discharge which is not, as respects to nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a ;discharge made within the preceding twelve months (whether by the same or a different outlet), so however, that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.”

Prior to amendment consent was not required to take any steps to establish an industry. After amendment it was made obligatory to obtain consent and even to take any steps to establish an industry, consent of the Board is required, as per Sec.25.

It is explicit from the section that consent was required at three stages. Firstly, before establishment; secondly – at the time of operation or process; thirdly – in case of any extension or addition thereto. The Supreme Court had an occasion to refer the virgin provision and the amended provision in (1) cited decision, wherein it has observed that after the amendment, the prohibition now extends even to “establishment” of the industry or taking of steps for that process and therefore before consent of the Pollution Board is obtained, neither can the industry be established nor can any steps be taken to establish it.

13. The next question is whether the Board is empowered to restrict the period of licence. Sec.25 (4)(3) is a complete answer to it. Under the said proviso the consent will be followed only for such period as may be specified in the order. It clearly indicates that the Board is empowered to fix the period of validity of the consent. It goes without saying that once the period of validity expires, the same is required to be renewed. Form XIII of Schedule I also gives an indication that renewal of consent is contemplated u/s 25 of the Water Act, 1974 after expiry of the validity period.

14. Sec.21 of the Air Act, 1981 obligates that no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. It is no more in dispute that the industry of the petitioner situates in air pollution control area. Sec.21(4) of the Air Act, 1981 reads as follows:

> " Within a period of four months after the receipt of the application for consent referred to in sub-section (1); the State Board shall, by order in writing, (and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent.)
>
> Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled:
>
> Provided further that before canceling a consent or refusing a further consent under the first proviso, a reasonable opportunity, of being heard shall be given to the person concerned."

By a close reading of the above-referred provision indicates that the Board is competent to fix the period of validity of licence. When once the Board is competent to fix the period of validity, it goes without saying that the same is required to be renewed after expiry of its validity period. Therefore, we find no merit in the contention of the learned counsel for the petitioner that the consent was not required for activities in the industry and so also consent once given needs no renewal.

15. Learned counsel for the petitioner submits that the consent fee charged is

exorbitant and there is no nexus with the services being rendered. Learned counsel for R1-Board contends that the amounts received as consent fee from the industries is being spent to over see the operation under the Air and the Water Acts etc. and to contain the pollution to the bearest minimum. Sec.37(2) of the Water Act, 1974 provides for spending the money received by the Board. It has been held by the Supreme Court in KRISHI UPAJ MANDI SAMITI V. ORIENT PAPER AND INDUSTRIES LIMITED that test of *quid pro quo* is not to be satisfied with close or proximate relationship in all kinds of fees. A good and substantial portion of the fee must, however, be shown to be expended for the purpose for which the fee is levied. We therefore do not see any substance in the contention of the learned counsel for the petitioner that the consent fee is exorbitant and no nexus in the service being rendered.

16. In the result, we hold that no case is made out to assail the judgment dated 31-08-2002 passed in Appeal No.19 of 1999 on the file of the Appellate Authority under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 and consequently this writ petition fails and the same is dismissed. No order as to costs.

Tnb

(DEVINDER GUPTA, CJ)

Dated: 29-03-2005

(B.SESHASAYANA REDDY, J)

One fair copy to the Honourable Sri Devinder Gupta,

The Chief Justice (for his Lordships kind perusal)

One fair copy to the Honourable Sri Justice

B.Seshasayana Reddy (for his Lordships kind perusal)

To

1. Two copies to Mr.S.V.Bhatt, Standing Counsel for A.P. Pollution Control Board, S.R. Nagar, Hyderabad.

2. Two copies to Standing Counsel for EFS & T Department, Secretariat, Hyderabad.

3. 2 CD copies.

4. 8 LR copies.